

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 457 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JITENDRABHAI JASHBHAI PATEL

Versus

MOHANBHAI SOMABHAI PATEL

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Appearance:

MR AJ PATEL for Appellant  
MR HM PARIKH for Respondent No. 1 to 4.5  
MR MC SHAH for Respondent Nos.5 to 11.

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/11/96

ORAL JUDGEMENT

1. Appeal admitted. Mr. H.M. Parikh waives service for the respondent Nos.1 to 4.5 and Mr. M.C. Shah waives service for respondent nos.5 to 11. At the joint request of learned counsel for the respective parties this appeal is taken up for final hearing today.

2. As a result of the hearing, particularly on the question of the proper forum where the present Appeal from Order would lie, a consensus has been arrived at between the learned counsel.

3. On a plain reading of the facts in the case, it is obvious that the valuation of the suit is Rs.44,000/-, that the Appeal from Order would only have been preferred by the present appellant on the passing of the impugned order below Exh.5 on 26th July 1996 and that on the said date section 26 of the Bombay Civil Courts Act postulates an appeal to this court only where the valuation of the suit is in excess of Rs.50,000/-. It is, therefore, obvious that the appeal has been preferred in this court erroneously and the same ought to have been preferred before the District Court. Learned counsel for the appellant does not contest this position. Accordingly by consent it is directed that the present Appeal from Order be returned to the appellant for presentation to the proper court.

4. The appeal is disposed of accordingly with no order as to costs.

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